



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 13, 1996

Ms. Gloria Portman
Certified County Treasurer
County of Panola
Panola County Courthouse, Room 212
Carthage, Texas 75633

OR96-2395

Dear Ms. Portman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102323.

The County of Panola (the "county") received a request for a list of participants in any county pension or retirement plan. You ask whether section 803.402 of the Government Code precludes disclosure of the requested information. We have considered your question and reviewed the submitted information.

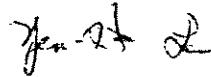
Section 803.402 of the Government Code provides that "records of members and beneficiaries of a retirement system . . . that are *in the custody of the system* are considered to be personnel records and confidential information under Chapter 552." (Emphasis added). Because the records, here, are in the custody of the county and not the retirement system, section 803.402 is inapplicable.

However, information may be withheld under section 552.101 in conjunction with common-law privacy if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has determined that some personal financial information is highly intimate or embarrassing and thus it meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 545 (1990), 523 (1989). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, financial information relating to retirement benefits must be disclosed if it reflects the employee's mandatory contributions to the county retirement system. Open Records Decision No. 600 (1992). On the other hand, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an option benefits plan offered

by the county. *Id.* It is not apparent from the submitted documents whether the retirement plan is mandatory or voluntary and we would caution you to evaluate the data before releasing it. See Gov't Code § 552.352. Lastly, we note that the request is for a list of participants in the retirement plan; therefore, if the retirement plan is mandatory and requires the release of information, you need only release Exhibit B which is a list of names of contributing employees.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 102323

Enclosures: Submitted documents

cc: Ms. Pat Liston
P.O. Box 695
Carthage, Texas 75633
(w/o enclosures)